

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ELIJAH SKATES,

Plaintiff,

**Civil Action No.
9:14-CV-1092 (TJM/DEP)**

v.

JARROD SHUSDA, et al.,

Defendants.

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

I. INTRODUCTION

This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred to the Hon. David E. Peebles, Chief United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). No objections to Magistrate Judge Peebles' Report and Recommendation [dkt. # 36] have been filed, and the time to do so has expired.

II. DISCUSSION

After examining the record, this Court has determined that the Report and Recommendation is not subject to attack for plain error or manifest injustice.

III. CONCLUSION

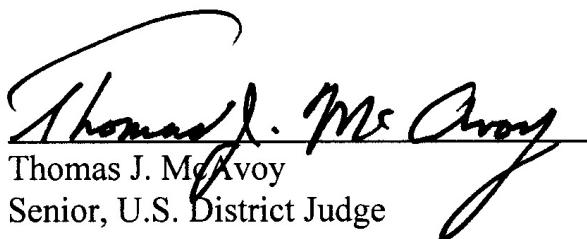
Accordingly, the Court **ADOPTS** the Report and Recommendation [dkt. # 36] for the

reasons stated therein. The defendants' motion to dismiss [dkt. # 34] plaintiff's amended complaint [dkt. # 33] is GRANTED in part, and plaintiff's equal protection and retaliation claims are DISMISSED with leave to file a second amended complaint within thirty (30) days from the date of this Decision and Order, but that the remaining portion of the motion, addressing plaintiff's First Amendment free exercise cause of action, is DENIED.

Plaintiff is advised that an amended complaint **supersedes in all respects** the prior pleading. Therefore, if Plaintiff files a second amended complaint, he **must properly** **allege in the second amended complaint all factual bases for all claims asserted** **therein.** The failure to file a second amended complaint within this time frame will be deemed as an abandonment of the dismissed claims, and a "with prejudice" dismissal will be entered on the Court's docket on the dismissed claims without further order by the Court.

IT IS SO ORDERED.

Dated: July 12, 2016



Thomas J. McAvoy
Senior, U.S. District Judge